1947. **File No.** O Dist Police 47

Legal DEPARTMENT

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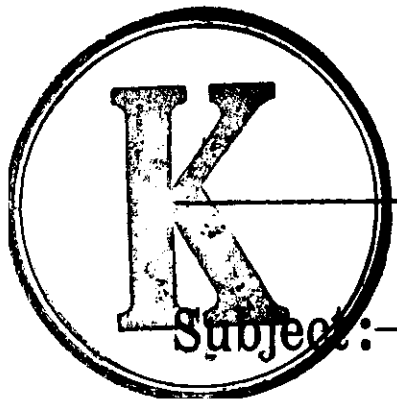

Subject:— Opinions under the Bombay Districts Police Act, 1890

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C O N T E N T S.

Legal Department File No. 8 District Police, 1947.

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2.	G.No. 1091 6-2-47	Section 46 (3)——Order requiring an externee to remove himself outside the province.	6.
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	DI 3179 15-3-47		
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14	S.No. 9716 4-10-47	Withdrawal of expenses on behalf of Govt. Officer.	43-46.
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Office of the R.L.A.

On 30th November 1946 the D.M. Poona issued an order under section 42 of the Bombay District Police Act, 1890 directing that the residents, frequenters and visitors of the following places viz. Poona City and Suburban Municipal Areas and Poona and Kirkee Cantonments shall within the said limits abstain in any place, from shouting political slogans or slogans likely to embitter communal feelings, singing of such songs, delivery of lectures or harangues etc. which different to inflame religious animosity or hostility btewaen different communities. This order was in force from 3rd of December 1946 to 31st December 1946 both days inclusive. It appears that on 31 st December 1946 a publick meeting was held under the auspices of the Poona City Hindu Sabha in Tilak Smarak Mandir, Poona. The ~~auspices~~ question for the consideration of the R.L.A. is wether Messrs. V.B. Gogte, S.L.Karandikar and Bal Shastri Hardas of Nagpur who addressed the meeting have contravened the order of the Distriot Magistrate, Poona.

In introducing Mr. Bal Shastri to the audience all that Mr. V. B. Gogte said was that the press reports about the Bihar massacre were far from truth. His speech does not contain anything which is likley to embitter the communal feelings and no contravention of the D.M.'s order is committed.

Mr. S. L. Karandikar, who presided at the meeting complained that the black out of information illustrated that ther e was casualty if truth at the hands of the Congress in this communal warfare and consequently the people were not in a position to estimate properly ~~xxxx~~ as to what was happening in the country nor could they gauge the public feelings. According to him whatever happened in Bihar was a retaliation to Naokhali outrages. His speech contains nothing likely to foment religious animosity and is not actionable.

Mr. Bal Shastri Hardas's speech contains the following important statements:

> "The Bihar Hindus were not at all out for committing disturbances, neither were they ag resolve. On the contrary the Muslims had planned to massacre Hindus on mass scale as was done in Calcutta. Unlicensed guns, revolvers and ammunition were distributed among the Muslims and the Muslims had made purchases of explosives from Hindu shops. For several days previous to riots t ere was continuous influx of large number of Muslims

in the Province and the Muslims population was counting up. This was brought to the notice of the authorities. The Muslim Government servants and the nationalist were outraged and slaughtered. The relations of some Bihari Hindus were butchered in Calcutta riots. Some Muslims fired on Hindus and humiliated Brahmins by taking them into procession."

This speech appears actionable. The question of the truth or otherwise of the contents of speeches is immaterial when we are considering the liability for contravention of the order of the District Magistrate dated 30th November 1946. All that is necessary for a successful prosecution is that the speech should be such as to be likely to embitter communal feelings. There seems little doubt that the speech of Mr. Bal Shastri Hardas was likely to embitter communal feelings. In the first place it alleges that the ~~xxxxxxxx~~Muslims had planned to massacre the Hindus on a large scale. Secondly it alleges that guns, revolvers and ammunition were distributed amongst the Muslims and further that the Muslims had also purchased explosives. Then there is the allegation that there was a continuous influx of large number of Muslims in the Province for some days. Finally, there is an allegation that the Muslim Government servants and the nationalist Muslim were hand in gloves with the miscreant rulers. In addition to these there are also the allegations about outrage on cows and the slaughter of cows. I do not see how it could be successfully contended before a Court of law that these allegations are not likely to embitter communal feelings. The speech of Mr. Bal Shastri Hardas hence does appear to furnish a good ground for successful prosecution.

Remembrancer of Legal Affairs.

U.O.R. to H. D. (Opl.) No. 85-Confl.

Dated the 26th February, 1947.

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Opinion of the Hon'ble Mr.

Under section 40 (3) of the Bombay District Police Act, 1890 an order can be made requiring an externee to remove himself outside the Province or to such place within the Province and by such route and within such time as the Magistrate may prescribe; and under clause (11) of section 46 D if a person to whom a direction has been made under section 40 to remove himself from a district, having so removed himself, except with the permission in writing of the Magistrate of the district or the sub-divisional Magistrate may cause him to be arrested and removed in police custody to such place outside the district as the magistrate may in each case prescribe. Reading these provisions together it is clear that theonly rex restriction imposed on an externee is that the only restriction imposed on an externee is that he cannot re-enter the district save with the permission of the Magistrate of the district from which he is externed. Consequently in the absence of any provision it would not be competent for the Magistrate of the district to w ich the externee is sent to restrictthis movements to any particular place in that district. The view taken by Secretary, Home Department, is not correct.

Remembrancer of Legal Affairs.

U.O.R. to H.D.(Spl.) No. 1291.

Dated the 8th February, 1947.

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Office of the R.L.A.

Statement of the Case.

On the 30th November 1946, the District Magistrate Poona
C pp 15 ante/and issued an order under section 43 of the Bombay District
Police Act, 1890 banning, among other things, delivery of
lectures or harangues etc. which are likely to inflame religious
animosity or hostility between different communities within the
limits of Poona City and Suburban Municipal areas and Poona and
Kirkee Contonments. On 31st December 1946, when this order
was in force a meeting was held under the auspices of the Poona
City Hindu Sabha in Tilak Smarak Mandir, Poona, which was addre-
ssed, among others, by one Mr. Bal Shastri Hardas of Nagpur.
The question for consideration is whether Mr. Bal Shastri Hardas
can be successfully prosecuted for breach of the District
Magistrate's order.

A summary of Mr. Bal Shastri's speech which is at pages
6-8 ante contains the following statements:-

"..... the Muslims had planned to massacre Hindus on mass
scale as was done in Calcutta. Unlicensed guns, revolvers
and ammunition were distributed among the Muslims and the
Muslims had made purchases of explosives from Hindu Shops.
For several days previous to riots there was continuous
influx of large numbers of Muslims in the Province and the
Muslims population was mounting up. This was brought to
the notice of the authorities. The Muslim Government
servants and the nationlist Muslims were in league with
the mischief makers. Cows were outraged and slaughtered...."

Considering the above statements and the speech as a whole,
pp 19-20 ante/ the R.L.A. observed in his opinion No. 35 dated 26th February, 47,

> "This speech appears actionable. The question of the truth or otherwise of the contents of the speech is immaterial when we are considering the liability for contravention of the order of the Dist Magistrate dated 30th November 1946. All that is necessary for a successful prosecution is that the speech should be such as to be likely to embitter communal feelings. There seems little doubt that the speech of Mr. Bal Shastri Hardas was likely to embitter communal feelings."

Being of the opinion that it would be difficult for the accused to successfully contend before a Court of Law that the allegations in the speech were not likely to embitter communal feelings ~~the~~ R.L.A. advised that a successful prosecution will lie

against Mr. Bal Chastri.

The Hon'ble Prime Minister is however not sure whether a conviction can be secured and as Government does not desire to launch a prosecution which may fail, the Advocate General, Bombay is requested to advise in the matter.

Remembrancer of Legal Affairs.

U.O.P. to the Advocate General, Bombay, No. 90—Confl.
Dated the 8th March, 1947.

CONFIDENTIAL. No. 15 of 1947

Advocate General's Chambers,
High Court,
14th March, 1947.

U. O. R. to the Advocate General, Bombay,
No. 96-Confl. Dated the 8th March, 1947.

OPINION.

I agree with the R.I.A. that Mr. Lal Shastri Hardas's speech is calculated to embitter communal feelings. In my opinionk it would be difficult to contend that that speech is not likely to create hatred between the communities—a prosecution should succeed

Advocate General.

Office of the P.L.A.

I append here with a copy of the opinion of the Advocate General, Bombay together with the Statement of the Case prepared for him. The Advocate General agrees with P.L.A. that a prosecution would succeed.

Remembrancer of Legal Affairs.

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The proclamation of emergency has now ceased to operate. The question is now merely academic upon which it is unnecessary to express any opinion.

Remembrancer of Legal Affairs.

U. R. to H. D. (Spl.) No. 6814.
Dated the 16th June, 1947.

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Office of the P.L.A.

Government has informed the District Magistrate, Ahmedabad, that according to Government's decision no compensation should be awarded under section 25-A of the Bombay District Police Act and section 45 of the City of Bombay Police Act in respect of that part of the property which covered by insurance. In view of the fact that Government's aforesaid executive order cannot abrogate the right of subrogation which the insurer can claim the District Magistrate, Ahmedabad has requested Government to consider the following two proposals:-

(1) Whether Government's order that the District Magistrate s ould take into account the amount recovered from the Insurance Company by a claimant should not be embodied in legislation instead of in an executive order; and

(2) Whether Government should enact legislation whereby such compensation as the District Magistrate may award shall not include such sums as an insurer may have paid and that suc insurer shall not be entitled to be paid such sums as he may have paid to the assured in respect of the loss concerned.

It is true that the fac t that the assured may be entitle d to be compensated for his loss by a third party does not in itself absolve the insurers from their obligati ns under the policy. Unless the policy so provides, the assured is not bound to exhaust his right and remedies against tird parties before having recourse to the ins rer; he is entitled in the first instance to claim as a full indemnity under the policy, leaving the insurers to exercise their rights of subrigation. Under the ordinary law of insurance, applicable to fire insurances also, if before payment is made under the policy, the third party (in this case the authority paying the compensation) makes a payment to the assured to compensate him for the loss, the loss which the assured has suffered is pro tanto diminished, and he can no longer claim payment in full under the policy. The amount received from the third partymust be taken into account, and the liability of th insurers, according o the amount so paid will be diminished or entirely extinguished. The sameprinciple applies to payments received from third parties after payment of the loss

in full under the policy. The assured has already been indemnified by the insurers, and if he is allowed to retain the moneys paid by the third party, he will be indemnified twice over. He must therefore account to the insurers for the moneys received from the third parties to the extent extents to which, when added to the policy moneys, they exceed the amount required for a full indemnity. (Halsbury's Laws of England Vol. XVIII pp. 470-71) Under the law of insurance, therefore, the insurers can enforce this right of subrogation. An executive order the the District Magistrate could take into account under the amount recovered from the Insurance Company — by a claimant would not affect that right. It would no doubt be open to pass legislation modifying that right. But apart from the difficultythat legislation relating to the law of insurance and the regulationof the conduct of insurance business being a federal subject (Item 37 in list I of the Seventh Schedule) the provincial Government would have no power to make such law, it would also be inequitable to deprive the insurer of his right of subrogationwhich the legislati-would involve. Section 35A contemplates compensation to any person or persons; and there is no reason why the insurer should be treated in a different manner, and why ~~the insurer should be treated in a different~~ he should be made to bear the loss arising out of damage done by riots. In my opinion, the most sensible solutionwould be to have legislationon the lines of section 2 (2) of the Riot(Damages) Act, 1886 (49 and 50 Victoria Chapter 38). The effect of that section which is reproduced below is that by a claimant by way of insurance or otherwise to recoup him in whole or in part for the loss sustained must be deducted from the amount payable to ~~the compensation paid~~ him under the section who and such deduction, shall on, be once payable to the person who has paid such insurance. The provision is as follows:

"where any person having sustained such loss as aforesaid has received, by way of insurance or otherwise, any sum to recoup him, in whole or in part, for such loss, the compensation otherwise payable to him under this Act, shall if exceeding such

sum, be reduced by the amount thereof, and in aby other case shall not be paid to him and the payer of such sum shall be entitled to compensation under this Act in respect of thex sum so paid in like manner as if he had sustained the said loss, and any policy of insurance given by such payer shall continue in force as if he had made no such payment, and where such person was recouped as aforesaid otherwise than by payment of a sum, t is enactment shall apply as if the value of such recoupment were a sum paid."

I would like to add that in case it is desired to promote hex legislation on these lines it may maybe embodied in the Omnibus Bill now on the anvil for amending the City of Bombay Act, 1902, an the Bombay District Police Act, 1890, particularly in respectiy of the right of compensation.

Remembrancer of Legal Affairs.

U. R. to H. D., No. 4486. dated the 2nd May 1947.

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R. L. No. 5633 and 5726
dt. 8-5-1947 10-5-47.

Submitted.

2. Please see R.L.A.'s opinion No. 4486, dated 2-5-47 and Secy. H. D.'s note, Secy. H.D. states that there would be nothing contrary to insurancelaw if Govt. were to exclude altogether from compensation persons or property who are already insured and that if this is so it is not necessary to prepare legislationbut to assume that wherepersons and property are insured, not to pay any claim for any property which is insured. The papers are shown to the R.L.A. for further remarks.

3. Under section 25 A (a) (i) of the Bombay District Police Act, 1890, the Magistrate of the district may with the previous sanction of the Commissioner and after such inquiry as he deems necessary determine the amount of compensation which in his opinion should be paid to any person or persons in respec of any loss or damage as caused to any property or in respect death or grievous hurt caused to any person or persons, by anything done in the prosecution of the common object of an unlawful assembly etc. Compensationto be determined by the under his section appears to be in the discretion of the Magistrate and if in any particular case the Magistrate is satisfied that no compensation should be ppid, the property or life being insured, then is orderis final, subject only to revision by the Commissioner. Such orders would no doubt be not in consistent with the insurance law and it is for H.D. to decide whether or not to promote legislation on the lines suggested in R.L.A.'s opinion No. 4486, dated the 2nd May, 1947.

4. Please see the Secy. H.D.'s note dated the 9th May, 1947 in the linked case below. He observes in this note as follows:-

"The question is whether an executive order of Govt. saying that no compensation should be given for not insured property would prevail over the Commissioner's order, which I think is a judicial order that compensation should be given

in such cases. Presumably it does not. The alternative would be then

(i) to request the Commissioner to revise his order in a concrete case, after, showing him the R.L.A.'s opinion which it is believed will be that it is legal for Govt. not to pay not insured claims.

(ii) to frame legislation."

The R.L.A. is requested to advise in the matter.

As pointed out in para. 3 above, under sub-section (1) of section 25 A of the Bombay District Police Act, 1890, it is for the Magistrate to determine the amount of compensation which should be paid to any person or persons, in respect of any loss or damage caused to any propertyor in respect of death or grievous hurt caused to any person or persons. Under sub-sectiin(4) this order is final subject to revision by the Commissioner. Thus the revisional powers under this sub-section are to be exercised by the Commissioner. The Govt. cannot by issuing instructions to him not to pay compensation in particular cases, fetter his revisional powers whic the statute confers on him. It is true that the Magistrate acting underthis section is not a court but a <u>persona designata</u> (cf. Bhagchand v. Secy. of State, 51 Bom. 725 at p. 728) thus it takes a ay the revisional or appellate jurisdiction of the High Court. But merely because the Commissioner acts in official capacityas an executive officer of the Court., Government cannot issue executive instructions fettering his revisional powers which the statute confers on him (cf. Ad. General's opinion dated 11-8-1941).

Attentionis invited to R.L.A.'s opinion No. 4486, dated 2-5-47. In his note dated 7-5-47, the Secy. H.D. observes that the R.L.A. informed him that there would be nothing contrary to the Insurance Law if Government were to exclude altogether from compensati n persons or property who arealr ady insured in any degree whatever for riot risk." He states t at if this is the case, the simples t course will be

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Office of the R.L.A.

Please see the linked case.

Remembrancer of Legal Affairs.

U.R. to H. D. No. 6437 dated the 21st June 1947

Office of the R.L.A.

The Remembrancer of Legal Affairs' statement that "there would be nothing contrary to the ins rance law if Government were to exclude altogether from compensation persons or property who are already insured in any degree whatever for riot risk" is correct so far as it goes; but the R.L.A. did not mean to say that exclusion from riot compensation of the insured persons or property or both can be achieved by any executive order. That can be done by suitable legislation; for under section 88A of the Bombay District Police Act and Section 45 of the City of Bombay Police Act every person is entitled to compensation in respect of any loss or damage caused to his property or in respect of death or grievous hurt caused in the riot and the fact that the property damaged or the person who died or was caused grievous hurt was insured is immaterial. It is however necessary to point out that to exclude completely from compensation all insured persons and property would be inequitable, for there may be cases where the damage or loss suffered may be more than that covered by insurance.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 6438, dated the 31st June, 1947.

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Office of the R.L.A.

It is represented to Government that in the name of religion a person followed by two or three women moves from street to street by beating a drum and striking his own body with a lash. The question raised for the consideration of the R.L.A. is whether this practice of mendicants can be stopped.

Under clause (h) of section 61(1) of the Bombay District Police Act, 1890, restriction can be imposed by making a regulation of exhibiting mimetic, musical or other performances of a nature attracting crowds. The performances in question would be attracted by this provision and it would be possible to stop such performances by resorting to clause (h) of section 61 (1) of the Bombay District Police Act, 1890.

Remembrancer of Legal Affairs.

U. D. to H. D., No. 7683. dated the 25th July, 1947.

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No. P.O.L.

Ahmedabad, 6th June, 1947.

To

The Remembrancer of Legal Affairs,
Government of Bombay,

Bombay.

Sub:- Externment proceedings under Section 46(3) D.P. Act, 1890. Order discharging notice issued on the opponent -- whether appealable under Sec. 46A(4).

The P. I., L. I. B. Crime, Ahmedabad, submitted a proposal throug the D.S.P., Ahmedabad, for the externment of one Mr. Mohamedhusen Husabhai @ Mohamed Mulla under Sec. 46(3) D.P.Act 1890 to the City Magistrate and Addl. District Magistrate, Ahmedabad. The learned Magistrate after considering all the facts refused to extern ~~him~~ D.S.P., the individual and discharged the notice issued against him. The D.S.P., therefore, asked the Senior Police Prosecutor to draft an appeal to challenge the order of the learned Magistrate under Sec. 46A(4) D.P. Act, 1890. The Senior Police Prosecutor gave his opinion in consultation with the Public Prosecutor ~~x~~ t at the order contemplated in Sec. 46 (3) is an order directing the person to remove himself outside the Province or such other place etc. No Court can call this order in question except on the grounds stated in Sec. 46A(4) of the D.P.Act, 1890.

The order passed by the Addl. District Magistrate is not an order under Sec. 46(3) and therefore no appeal lies under Sec. 46 A (3) at all. It is an order discharging the notice issued to the person. However, as the point is not free from doubt, I would request ~~you~~ to give your authoritative opinion on the points raised by the Police Prosecutor. The matter is of importance and is likely to arise ~~in~~ in other cases.

P.T.O.

Papers received from the D.S.P., Ahmedabad (pages 1 to 61) are enclosed herewith, which may please be returned with your opinion.

DISTRICT MAGISTR ATE,
AHMEDABAD.

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Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 24th July, 1947.

To

The District Magistrate,
Ahmedabad.

Sub:- Externment proceedings under section 46(3) of the District Police Act, 1890. Order discharging notice issued on the opponent whether appealable under section 46A(4).

Sir,

With reference to your letter No. P. C. I., dated the 6th June 1947, I have the honour to state as follows:-

Sub-section (3) of section 46A of the Bombay District Police Act, 1890 provides:-

"Any person aggrieved by an order made by the Magistrate under sub-section(1), (3) or (4) of section 46 may appeal to the Provincial Government within thirty days from the date of such order."

An aggrieved person is a person who has suffered a legal grievance - a man against whom a decision has been pronouced which has wrongly deprived him of something or wrongfully refused him something or wrongfully affected his title to somet ing (see Lalji Sahay Singh v. Abdul Gani, 7 Ind. Case 765 (766); In Exp. Dedebotham (14 Ch. D. 458, 465). Since the Additional District Magistrate discharged the notice issued against Mr. Mohamedhussein Musabhai Mohamed Hulla and made no externment order under sub-section (3) of section 46, there is no aggrieved person can appeal under sub-section (3) of section 46A. The view taken by you is correct.

The papers received with your letter under reference are returned herewith.

Yours obedient servant,

Remembrancer of Legal Affairs.

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9/5/56.

Office of the D.I.A.

The view taken by the D.I.G.P. in his letter at page 1 ante is correct. No order can be validly passed under section 46(3) of the Bombay District Police, Act, 1890 directing the extremee to remove himself to a particular place outside the Province.

Remembrancer of Legal Affairs.

U. R. to H. D. , No. 9466.

dated the 31st August, 1947.

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Office of the R.L.A.

It is possible to stop these Tamashas by issuing orders under section 48 of the Bombay District Police Act, 1890; but such orders can be passed only for such time as it shall appear necessary.

Remembrancer of Legal Affairs.

U. R. to H. D. (Poll), No. 6865
Dated the 12th August, 1947.

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Office the R.L.A.

In view expressed by the Secretary, Home Department, in his not dated 13-8-47 is correct. Under section 42 (1A) of the Bombay District Police Act, 1890, a Magistrate of the First Class needs no empowerment whereas a Magistrate of the Second Class needs to be specially empowered not by the District Magistrate but by Government (see R.L.A.'s opinion F o.,6696, dated 16-8-46).

Remembrancer of Legal Affairs.

U. R. to L. D. (Spl.) No., 8566.

dated the 26th August, 1947.

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Para; 1218 of the Police Manual provides:-

"When the preliminary inquiry indicated a criminal offence application to prosecute should at once be made to the authority empowered to dismiss and permission should be promptly granted if that authority agrees that there is a prima facie case for the prosecution and does not consider that there exist adequate reasons, which must always be recorded for not instituting a prosecution. This procedure is however unnecessary etc."

The Secretary, Home Department appears to argue that if an order of this kind can be made by Government under section 5(1) of the Bombay District Police Act, 1890, there is no reason why Government orders should not fall under the same provision. The R.L.A. is requested to confirm the view taken by him.

Under section 5(1) of the Bombay District Police Act, 1890, the I. G. P. shall have such functions authority and responsibility as are hereinafter provided subject to the provisions of this Act and to such rules and orders as may be made by the Provindial Government. Section 30 provides for holding a departmental inquiry before inflicting any punishment on a police-officer. The orders contained in para. 1281 of the Police Manual prohibit the impositionof any punishment if the departmental inquiry discloses a criminal offence and provides for making an application to the proper authority for sanction to prosecute for the offence. It is therefore apparent that these orders fall under section 5(1) inasmuch as they impose restrictions subject to which the powers under section 30 should be exercised.

Under the Prevention of Corruption Act, 1947, the offences under sections 161 and 165, I.P.C. are made cognizable and all public servants who are guilty of these offences can be prosecuted with the sanction of the proper authority. It is not necessary that there should be any departmental inquiry before any public servant can be prosecuted for such offence; and in fact Government orders dated the 11th June 1947, do not contemplate any such departmental inquiry. Consequently these orders of Government do not propose to impose any restrictions or limitations on the functions, authority or responsibility of

the I.C.P. as provided in the Bombay District Police Act, 1890, and therefore would not be relatable to section 5(1) without straining the language of that section.

Remembrance of Legal Affairs.

U. R. to H. D. No. 8071 dated the 6th August, 1947.

Office of the R.L.A.

It appears that the Additional District Magistrate, Ahmedabad has passed an order on 24th April 1947 under section 46(4) of the Bombay District Police Act, 1890, externing Mr. Karim Ilahi Khudabux from Ahmedabad City and its Municipal-limits. Apparently that order, not being one for the externment of Mr. Karim from the Ahmedabad district, is contraryto the provisohons of section 46(4). Mr. Karim has now appealed to Government under section 46-A (3). Secretary, H. D. observes at page 19 ante:-

"In this case it seems it will not be incorrect to modify the order and change the externment to from the district if the order is otherwise considered proper on merit."

The R.L.A. is requested to advise.

It is presumed that what the Secretary, H. D. proposes to do is to modify the externment order of the A dditional District Magistrate directing the externment of Mr. Krim from the district instead of from Ahmedabad City and its municipal limits. Although section 46-A(3) of the Bombay District Police Act, 1890, does not define the appellate powers of Government, nevertheless such powers do include power to modify the order passed by the Additional District Magistrate, Ahmedabad and to that extent the view taken by the Secretary, H.D. is correct. But it appears that it would not be legally feasible for Government to modify the order of Additional District Magistrate, Ahmedabad, for the very notice (see p.8 ante) served on Mr. Karim which forms the basis of the externment order required him to show cause why he should not be externed from Ahmedabad City (and not from the district as required by law) is defective. Consequently the proper course for Government would be to set aside the order as being opposed to section 46 (4) and to direct the Additional District Magistrate to hold fresh proceedings after issuing a notice to Mr. Karim to show cause why he should not be externed from the distgict.

SVV 9/5/48

H.R. to H.D.(Spl.) Remembrancer of Legal Affairs. dated 14th [illegible] 47

Office of the P.J.A.

Restriction of movements of an Externee.

Bombay Police Act, 1890.

Whatever may have been the underlying intention, it would not be legally feasible to restrict the movements of an externee to a particularplace, to which he was removed himself a directed by the order issued under clause (d) of section 40A of the Bombay District Police Act, 1890 unless section 40D is amended. [See P.J.A.'s opinion No. 1891, dated the 8th February 1947.].

Remembrancer of Legal Affairs.

U. R. to H. D., No. 9462.
dated the 24th October, 1947.

SVV
9/5/5
4 C.

Submitted.

Please see the letter of the Inspector General of Police on p. 1 ante. It appears that two Head Constables (1) Chavlad Sukharam Mali and another Constable G.P. Kulkarni of the East Khandesh District Police Force were accused of an offence under sections 342, 347, 304 and 114 I.P.C. along with three other private persons and prosecuted in the Court of the sub-Divisional Magistrate I class, Chalisgaon in 1945-46. The trying Magistrate acquitted the Head Constable Mali and the convictin the other Head Constable constable Kulkarni. Constable Kulkarni was also acquitted on appeal by the Sessions Judge, East Khandesh and the Head Constable Mali and Constable Kulkarni were reinstated in service after their acquittal and their arrears of pay and allowances were paid to them the sanction of Government. These two policemen have requested Govt. for the reimbursement of the expenses incurred by them for their defence which is Rs. 293/4/- (Head Constable)and Rs. 54-/- (Constable) The I. G. P. recommends the payment of the above amounts to the policemen and H.D. has agree to comply with the I.G.P.'s recommendation. Papers are shown to the L.D. and L.D. before orders in the matter are issued.

3. Rule (1) of the rules accompanying G.R.H.D. No. 6105/3 dated 20-9-1936. lays down:

" Police officers will always be protected when it appears to Govt. that they have acted in good faith, but Govt. does not bind itself to undertake their defence when this is not the case. When Govt. declines to defend, it rests with the officer concerned to take such measures as he considers necessary at his own expense, but if the verdict of the Court is in favour of the Police officer Govt. will ordinarily reimburse his expenses. It is to be distinctly understood, however that Govt. do not undertake to pay any except reasonable expenses." Since the two policemen concerned have been honourably acquitted by the Court and Govt. declined to defend them there isno legal objection if

the H. D. accepts the I.G.P.'s recommendation. It is for H.D. as the administrative Deppt. [illegible] to consider as to what are reasonable expenses in this case. The papers may therefore be seen and passed on to the F.D.

GBV
9/5/56.
A. C.

Office of the R.Z.A.

Reimbursement of expenses.

Bombay District Police Act, 1890.

Without any material explaing the nature of the offence and the grounds for acquittal, it is difficult for the Remembrancer of Legal Affairs to express an opinion whether Government should in this case depart from the ordinary rule of reimbursing the officer for his expenses.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9715, dated the 4th October, 1947.

SVV
9/8/50
4 c.

Office of the R.I.A.

Internment. Bombay District Police Act, 1890 and the Bombay Public Security Measures Act, 1947.

Dharmaviraing Arjunaing contravened the provisions of section 46D(1) of the Bombay District Police Act, 1890 by entering the district of Karwar without the permissionin writing of the SubpDivisional Magistrate, Karwar Division. He was tried and convicted of the offence on 26th September, 1947~~it~~ and sentence to undergo rigorous imprisonment for one year and a fine of Rs. 200 or in default of payment of fine to suffer further R.I. for four months under section 46D (2). It is presumed that Dharmaviraing has filed no appeal against his conviction. If so, he will continue in jail for about six a year and there would be no point in keeping the detention order alive during that peiod. Consequently there will be no objection to asking the District Magistrate, Karwar, to cancel the detention order passed by him under the Bombay Public Security Measures Act, 1947, after the period for filing an appeal against the conviction expires.

An order passed upon fresh cause given by him after his release would be more justifiable in the eye of the law than the continuation of the present order even when he is undergoing regular imprisonment.

Remembrancer of Legal Affairs.

U.B. to H.D. (Spl.) No. 10613.

dated the 6th November, 1947.

EVV
9/5/56
4 c.

Office of the P.L.A.

R.:Interpretation of the Order banning carrying of sticks.

Bombay District Police Act, 1890.

Apart from the question that the primary object was not to carry a weapon of offence the true ground for the acquittal can be shortly stated to be that the stick was not carried qua stick but only as a part of a flag. A stick when it is part of something else the ex carrying of which is not banned would not come within the letter and the spirit of the prohibitory order. It is, therefore, difficult to challenge successfully the view taken by the Additional Sessions Judge. (Cf. 49 Bom. L.R. page 340).

Remembrancer of Legal Affairs.

U. R. to H. D., No. 10479,

dated the 1st November, 1947.

GVV
9/5/56.
4 c.

Office of the R. L. A.

In R. L. A.'s opinion No. 9462 dated 24th September 1947 for the letters, figures and words "clause (d) of section 46A" read "sub-section (3) of section 46,"

Remembrancer of Legal Affairs.

U. R. to H. D., No. 11919, dated the 11th December, 1947.

SVV
9/5/56.
4 c.